IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3916 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

INDIAN FARMERS FERTILISER CO-OP LTD

Versus

D D PANDYA & ORS.

Appearance:

1. Special Civil Application No. 3916 of 1991

MR KS NANAVATI, SR.ADVOCATE FOR

NANAVATI ASSOCIATES for Petitioner No. 1

NOTICE SERVED for Respondent No. 1,3

MS SANGEETA PAHWA for MR PM THAKKAR for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI

Date of decision: 17/09/2004

ORAL JUDGEMENT

#. The petitioner challenges the award of the Industrial Tribunal made on 20th March, 1991, in Reference No.(IT) 21 of 1987 by which the Tribunal declared that 56 employees who were taken in employment by contractor M/s.V.K.Patel were deemed to be the direct employees of

the petitioner-IFFCO. The petitioner was directed to pay wages, D.A. and other benefits to them as were payable to the regular employees of the petitioner.

#. The petitioner is a cooperative society registered under the Multi Unit Cooperative Societies Act, 1925 and is also registered as a factory under the provisions of the Factories Act. It was engaged in manufacture of chemical fertilizer-Urea. According to the respondent-Union, 86 workmen were employed through the Contractors for bagging and material handling, and that none of the Contractors through whom the 86 workmen were employed in the bagging and material handling section of the petitioner had obtained requisite licence under the Act. Therefore, these workmen of the Contractors should be made permanent workmen of the petitioner.

2.1 According to the petitioner, the concerned workmen were the workmen of the Contractors and that the prayer of the Union that the concerned workmen should be made permanent employees of the petitioner would tantamount to abolition of the contract labour and therefore, the Industrial Tribunal cannot give such relief to the Union under the provisions of the Industrial Disputes Act.

2.2 The Tribunal held on the basis of the material on record that it was proved that 56 out of 86 workmen were the employees of the Contractors. This finding was reached on the basis that the Contractor M/s.V.K.Patel, who had engaged these workmen, was not having a licence for the period from 27.2.1986 upto 20.7.1986. Though it was observed that the said Contractor had a valid licence all throughout and that it was not possible that for the aforesaid period the Contractor may not have any valid licence, it was held that since no licence was produced for the said period, the Tribunal had to decide on the basis of the record that there was no valid licence obtained by the Contractor-M/s.V.K.Patel for the period from 27.2.1986 to 20.7.1986. It was therefore held that the workmen who were working during the said period as contract labour would be deemed to have been employed by the principal employer. It was held that since 56 workmen were employed during the said period by the Contractor who had no valid licence for that period, those 56 workmen (whose names were not available) should be treated as direct employees of the petitioner. The remaining 30 workmen out of total 86 were not treated as direct employees of the petitioner.

#. The learned Senior Advocate appearing for the

petitioner contended that even if the labour Contractor violated the provisions of Section 12 of the Contract Labour (Regulation & Abolition) Act, 1970, which provided for licencing of Contractors, the contract labour cannot be deemed to have become the employees of the principal employer. He relied upon the decision of the Supreme Court in Dena Nath and others v. National Fertilisers Ltd. and others reported in AIR 1992 SC 457 in support of this contention pointing out that the Supreme Court did not agree with the contrary views of the Madras and Bombay High Courts.

#. The decision in Dena Nath and others v. National Fertilisers Ltd. and others (supra) was overruled in Air India Statutory Corporation, etc. v. United Labour Union and others, reported in AIR 1997 SC 645. However, the said decision in Air India Statutory Corporation, etc. v. United Labour Union and others (supra) came to be overruled by a Larger Bench in Steel Authority of India Ltd. and others v. National Union Water Front Workers and others, etc., reported in AIR 2001 SC 3527 (see paragraphs 101 and 102 of the judgment) in which the Supreme Court held that it cannot be said that by virtue of engagement of contract labour by the Contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. In Steel Authority of India Ltd. and others v. National Union Water Front Workers and others, etc. (supra), the Supreme Court approvingly referred to the ratio of Dena Nath's case in paragraph 94 of the judgment. Observing that the Court had resolved conflict of opinions by holding that the only consequence of non-compliance of the provisions of Sections 7 and 12 of the said Act was the penal provisions under Section 23 to 25 thereof and that merely because the Contractor or employer had violated any provision of the Act or Rules, the High Court, in proceedings under Article 226, could not issue any Mandamus for deeming the contract labour as having become employees of the principal employer.

#. The Madras High Court in The Workmen of Best & Crompton Industries Ltd. v. The Management of Best & Crompton Engineering Ltd., Madras (1985(1) Lab LJ 492) had taken a view in a Letters Patent Appeal to the effect that if the Contractor did not possess the requisite licence under Section 12, the management cannot treat the workmen as contract labour. The Supreme Court, in terms, disagreed with this view in paragraph 22 of its decision in Dena Nath's case.

#. It is thus clear that the ratio of the decision in Dena Nath's case holds the field and therefore, even if there was violation of Section 12 of the said Act by the Contractor not having a licence during the aforesaid short period, that by itself did not have the effect of deeming the contract labour as having become the employees of the principal employer.

#. It is therefore clear that the finding of the Industrial Tribunal that during the period from 27.2.1986 to 20.7.1986, since the Contractor M/s.V.K.Patel did not hold a valid licence, 56 workmen who had worked during that period are deemed to have become workmen of the petitioner is contrary to the ratio of the decision in Dena Nath's case, and not warranted by the provisions of Section 12 of the said Act. The impugned award therefore cannot be sustained and is hereby set aside. Rule is made absolute accordingly. Interim relief stands vacated.

(R.K.ABICHANDANI, J.)

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